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September 9, 2021

VIA EMAIL

Hon. Cathy L. Waldor
United States District Court
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re : *Evanston Insurance Company v. Accredited Environmental Technologies, Inc., Environmental Waste Management Associates, LLC, and BRG Harrison Lofts Urban Renewal, LLC*

Docket No. : 2:16-cv-06577

PMT File No. : N-BERK-00112/GLM

Dear Judge Waldor:

We represent Environmental Waste Management Associates, LLC ("EWMA") in the insurance declaratory judgment action brought by Evanston Insurance Company ("Evanston").

In this action, Evanston seeks a declaration that it is not obligated to defend or indemnify EWMA and Accredited Environmental Technologies, Inc. ("AET") in connection with the lawsuit brought by BRG Harrison Lofts Urban Renewal LLC ("BRG") against General Electric Company, ("GE"), AET and EWMA (the "BRG action"). The BRG action was brought to recover the costs of environmental remediation efforts at a site in Harrison, New Jersey. Evanston insured AET under primary and excess liability policies in effect for the period January 1, 2012 to January 1, 2017. The policies provided Contractors Pollution Liability ("CPL"), Commercial General Liability ("CGL") and Professional Liability ("PL") coverage. EWMA qualifies as an additional insured under those policies.

Following the deposition of Melissa Anderson, the Evanston claim representative who denied coverage for BRG's claim against EWMA and AET, we wrote to counsel for Evanston on October 27, 2020 requesting a copy of the claim notes maintained by Evanston Insurance Company and/or Markel Corporation in connection with the claims asserted arising out of the testing for mercury vapors at the BRG Harrison Lofts Urban Renewal property, as testified to by Ms. Anderson. A copy of the October 27, 2020 letter is annexed hereto as Exhibit A.



HON. CATHY L. WALDOR
SEPTEMBER 9, 2021
PAGE 2 OF 2

On July 1, 2021, counsel for BRG wrote to the Court in connection with the status conference that was scheduled to take place on July 1, 2021. The parties agreed on the wording of the letter and advised the Court “Certain depositions in the insurance action have already taken place, and the parties are awaiting a production of claim notes by Evanston. Counsel for Evanston will produce the requested claim notes within thirty (30) days, no later than Friday, July 30, 2021.” A copy of the July 1, 2021 letter is annexed hereto as Exhibit B.

On August 13, 2021, the undersigned wrote to Evanston’s counsel in a good faith attempt to resolve the outstanding discovery issue and requested that Evanston “produce the requested claim notes within 20 days to avoid motion practice.” A copy of the August 13, 2021 e-mail is annexed hereto as Exhibit C.

To date, we have not received Evanston’s claim notes. No motion for a protective order has been filed by defendants.

Based on the foregoing, EWMA respectfully requests that the Court schedule a pre-motion conference in advance of a motion pursuant F.R.C.P. Rule 37 (b)(2)(A) Failure to Comply with a Court Order or, alternatively, F.R.C.P. 37 (a)(B)(iv) Motion for an Order Compelling Disclosure or Discovery.

Thank you very much for your consideration.

Respectfully submitted,

PILLINGER MILLER TARALLO, LLP

By

A handwritten signature in black ink, appearing to read 'Neil L. Sambursky', written over a horizontal line.

NEIL L. SAMBURSKY
GEORGE L. MANIATIS